

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

State of Oklahoma, et al.,)	05-CV-0329 GKF-PJC
)	
)	
Plaintiffs,)	THE CARGILL DEFENDANTS’ REPLY
v.)	IN SUPPORT OF THEIR PARTIAL
)	JOINDER (DKT. NO. 2445) IN
Tyson Foods, Inc., et al.,)	PETERSON FARMS, INC.’S MOTION
)	IN LIMINE SEEKING TO EXCLUDE
Defendants.)	EVIDENCE PURSUANT TO, <i>INTER</i>
)	<i>ALIA</i>, FEDERAL RULE OF
)	EVIDENCE 403
)	

Cargill, Inc. and Cargill Turkey Production, LLC (“the Cargill Defendants”) offer the following reply in support of their joinder (at Dkt. No. 2445) of certain portions of Peterson Farms, Inc.’s omnibus “Motion in Limine Seeking to Exclude Evidence Pursuant to, *Inter Alia*, Federal Rule of Evidence 403” (Dkt. No. 2397). The Cargill Defendants expressly joined the statements, arguments, and authorities contained in sections III, IV, V, VI and VII of the omnibus motion. (Dkt. No. 2445 at 1.) Likewise, the Cargill Defendants hereby incorporate by reference all arguments not specific to Peterson Farms asserted in its reply in support of the omnibus motion in limine (Dkt. No. 2555).

Plaintiffs oppose the Cargill Defendants’ joinder by repeatedly protesting that “Cargill has offered no specific facts related to Cargill to support its Joinder in Peterson’s Motion.” (Pls.’ Opp’n to Cargill Joinder: Dkt. No. 2512 at 1; Pls.’ Opp’n to Peterson Omnibus Mot. in Limine: Dkt. No. 2509 at 4, 9-10, 17 (same).) However, the Cargill Defendants specified that they joined “all arguments not specific to Peterson Farms, Inc. Namely:

- Section III regarding collective references to Defendants’ grower contracts;
- Section IV regarding attribution of other Defendants’ statements or documents to another Defendant;

- Section V regarding references to Defendants’ purported general knowledge and general references to industry groups, etc.;
- Section VI regarding references to Concentrated Animal Feeding Operations; and
- Section VIII regarding references to Defendants’ ‘waste’.”

(Dkt. No. 2445 at 1.) In other words, because the joinder involved only aspects of Peterson Farms’ omnibus motion pertaining broadly to all Defendants, the Cargill Defendants had no need to add to the already voluminous briefing in this matter by asserting additional (unnecessary) facts. Indeed, Plaintiffs’ one-paragraph response to the Cargill joinder fails to suggest any specific missing Cargill fact that could affect the outcome of the portions of the Peterson Farms’ motion that the Cargill Defendants joined. (See Dkt. No. 2512 at 1.) The Court should reject Plaintiffs’ request to dismiss Cargill’s perfectly proper joinder.

The Cargill Defendants do take this opportunity to correct a key misstatement in Plaintiffs’ opposition to the underlying motion. In Section III regarding collective references to Defendants’ grower contracts, Plaintiffs are simply incorrect in asserting that “[i]t is undisputed that Defendants’ contracts are all alike in substance” in seven ways. (Dkt. No. 2509 at 4 (offering no record citations).) To the contrary, and as the Cargill Defendants explained in opposing the State’s motion for summary judgment (Dkt. No. 2200), several of these seven purportedly universal points undisputedly **differ** among the various defendants. For instance, whereas Plaintiffs claim that “[e]ach Defendant chooses when to place and pick up the birds,” the Cargill Defendants and their contract growers actually negotiate delivery dates for turkeys. (See, e.g., Ex. B2 to Cargill Defs.’ Mot. Summ. J.: Dkt. No. 2079-4: Alsup Dep. at 78:12 – 79:9.)

Similarly, although Plaintiffs contend that it is a given that “[e]ach Defendant’s contract terms are non-negotiable and presented to growers on a ‘take it or leave it’ basis” (Dkt. No. 2509 at 4), many aspects of the Cargill Defendants’ contracts with contract growers were and are in fact negotiated. (See, e.g., Ex. A to Cargill Defs.’ Opp’n to Pls.’ Mot. Summ. J.: Dkt. No. 2200-

2: Maupin Dep. at 396:6 – 397:10.) As Mr. Maupin testified as a corporate designee:

- Q Let's talk about contracts in general. It's true, is it not, that Cargill does not negotiate the individual terms of its contracts with its growers?
- A That's incorrect.
- Q Okay. What individual terms of its contracts does Cargill negotiate with its growers?
- A Bird type, the downtime between flocks, location of the house, exact equipment in the house. There may be others. Those are the ones I can immediately think of.
- Q Explain to me what you mean by you individually negotiate bird type with a contract grower.
- A We grow a number of different bird types at different locations, and depending on a grower's individual house type or preference, they can enter our program in different types of birds.
- Q And once they've entered the program for different types of birds, do those birds change over time?
- A They can.
- Q And when those birds change, are they changed at the discretion of the Cargill operation that is Cargill, Inc., or Cargill Turkey Production?
- A It can be at Cargill's discretion or the grower.
- Q And more times than not, it's at Cargill's discretion in order to fulfill its marketing needs, is it not?
- A It can happen either way.

(Id.) In addition, growers can and do elect to discontinue their services for one poultry company and contract instead with another. (See, e.g., id. at 381:15-25; Dkt. 2200-5: June 9, 2005 Fixed Term Turkey Feeding & Mgmt. Agree. with CTP (CARTP003561-68).) Finally, based in part on the multiple negotiated issues discussed above, the Cargill Defendants hotly dispute Plaintiffs' contention that all Defendants' contracts are contracts of adhesion. (See Pls.' Opp'n Peterson Omnibus Mot. in Limine: Dkt. No. 2509 at 4.)

Not only is it simply inaccurate as a matter of fact to refer to all Defendants' contracts over time as "all alike in substance" (id.) if the Court permitted Plaintiffs to lump all Defendants' contracts together, the jury will be misled and confused and Defendants unduly prejudiced as a result. Such unjustified conglomeration of the Defendants' contracts would also waste trial time

by forcing each individual Defendant to offer cross-examination and evidence about its own contracts to rebut erroneous characterizations that Plaintiffs never should have made in the first place. The Court should bar such false and unhelpful references at trial.

CONCLUSION

For the above reasons and those at Docket Nos. 2397 and 2555, the Cargill Defendants urge the Court to grant Peterson Farms, Inc.'s omnibus "Motion in Limine Seeking to Exclude Evidence Pursuant to, Inter Alia, Federal Rule of Evidence 403" as it pertains to all Defendants.

Dated September 3, 2009

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CERTIFICATE OF SERVICE

I certify that on the 3rd day of September, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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